



POLICE DEPARTMENT

June 19, 2019

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In the Matter of the Charges and Specifications : Case No.
- against - : 2017-18331
Lieutenant Yael Magori :
Tax Registry No. 942099 :
70 Precinct :
-----X-----

At: Police Headquarters
One Police Plaza
New York, NY 10038

Before: Honorable Paul M. Gamble
Assistant Deputy Commissioner Trials

APPEARANCES:

For the Department: Beth Douglas, Esq.
Department Advocate's Office
One Police Plaza, 4th Floor
New York, NY 10038

For the Respondent: Rae Downes Koshetz, Esq.
747 Third Avenue, 20th Floor
New York, NY 10017

To:
HONORABLE JAMES P. O'NEILL
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

CHARGES AND SPECIFICATIONS

1. Said Lieutenant Yael Magori, assigned to the 61st Precinct, on or about September 17, 2017, while on duty, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, to wit: said Lieutenant improperly directed that a Desk Appearance Ticket be issued to an individual who was arrested on a felony charge and for it to be downgraded to a misdemeanor charge.

P.G. 203-10, Page 1, Paragraph 5

Prohibited Conduct-General Regulations
 2. Said Lieutenant Yael Magori, assigned to the 61st Precinct, on or about September 17, 2017, while on duty, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, to wit: said Lieutenant improperly directed officers under her supervision to not secure a prisoner with leg shackles, as required.

P.G. 203-10, Page 1, Paragraph 5

Prohibited Conduct-General Regulations
 3. Said Lieutenant Yael Magori, assigned to the 61st Precinct, on or about November 1 2017, wrongfully and without just cause did prevent or interfere with an official Department investigation, to wit: said Lieutenant made false and misleading statements to Members of Patrol Borough Brooklyn South Investigations Unit during an official Department interview.

P.G. 203-10, Page 1, Paragraph 2(d)

Public Contact-Prohibited Conduct
 4. Said Lieutenant Yael Magori, assigned to the 61st Precinct, on or about November 1 2017, during an official Department interview pursuant to the provisions of Patrol Guide 206-13, did wrongfully make false and misleading statements to Members of Patrol Borough Brooklyn South Investigations Unit.

P.G. 203-08, Page 1, Paragraph 1

Making False Statements

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before the Court on March 5, 6, and 26, 2019. Respondent, through her counsel, entered pleas of Not Guilty to the subject charges. The Department called Deputy Inspector James King, Lieutenants Richard Tully and [REDACTED], Sergeants Smithu Samuel and Kevin Cascone, Detective Samuel Shaya, Police Officers Dane Miller and Domenick Gheller, and SPAAs Earlene Holloway as witnesses. Respondent called Police Officers Paul Gallo, Felix Chabanov and Yi Wen Li, and testified on

her own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review. After considering the evidence, I find Respondent Guilty of all charges and recommend she be suspended for 15 days, forfeit 30 vacation days and be placed on one-year dismissal probation.

INTRODUCTION

The instant matter arose from a set of arrests effected after a dispute between two drivers, Person A and Person B. The following is a summary of the facts which are not in dispute.

At around 1330 hours on Sunday, September 17, 2017, Police Officers Miller and Harvey responded to an assault radio run at the intersection of [REDACTED] in Brooklyn. The incident began when Person A attempted to back into a parking space and made contact with Person B's vehicle. The men, who were both in their 60s at the time, became engaged in a physical altercation. Miller interviewed Person A and Person B at the scene.

Person B alleged that Person A had choked him; the responding officers reported seeing redness on his neck consistent with the allegation. Person B admittedly struck Person A in the head with a tennis racquet, causing a large laceration, which was closed with nine staples. The Patrol Supervisor, Sergeant Smithu Samuel, responded to the scene and both men were placed under arrest. Person A was taken to [REDACTED] Hospital by ambulance, while Miller transported Person B to the 61st Precinct. Miller and Samuel conferred at the scene and again at the precinct, concurring that each defendant would be charged with a felony - Person A with Strangulation in the Second Degree (P.L. § 121.12) and Person B with Assault in the Second Degree (P.L. § 120.05). Miller began preparing the arrest paperwork, filling out a scratch online booking sheet (Dept. Ex. 1) which reflected Person A's felony charge.

Shortly after the arrests, Respondent assumed her duties as Desk Officer and Third Platoon commander, working a 1445 x 2347 tour. Because the Commanding Officer, then-Captain James King was off-duty that day, Respondent was the highest ranking Member of Service working that tour. After examining the Command Log, she learned that Person A, an individual whose family she had been acquainted with since the early 1990s, had been hospitalized after being arrested in her precinct. As a teenager, Respondent had sometimes socialized with [REDACTED] Person A's [REDACTED] Person A's [REDACTED]
[REDACTED] At some point while Person A was in custody, [REDACTED]
attempted to reach Respondent, calling and texting her personal cellphone.

While Person A was in the hospital, the Community Affairs Officer, Detective Samuel Shaya, who was also off-duty that day, received a phone call from a community liaison inquiring about Person A's arrest and later about whether he might be eligible for a Desk Appearance Ticket. Shaya contacted Samuel to get more details and also called King to advise that community members might inquire about this arrest.

Miller came to alter his scratch online booking worksheet, striking Person A's felony charge and writing in "Criminal Obstruction of Breathing," a Class "A" misdemeanor. The circumstances under which he did so are disputed. He also attempted to change the felony charge in the computer, and prepared a DAT on the misdemeanor charge.

After Person A returned from the hospital, Respondent, who had briefly spoken with King about the arrest, signed the DAT. Shortly thereafter, following a conversation between Respondent and Lieutenant [REDACTED] it was determined that the misdemeanor needed to be voided and that Person A would be charged with a felony. The substance of, and circumstances around, that conversation are disputed.

Person A was again transported to the hospital by Police Officer Gallo around 2200 hours on September 17th; he was processed at Central Booking the following day. There, it was discovered that Person A had U.S. currency on his person which had not been voucherized. Officer Yi Wen Li, who had transported him to Central Booking, brought the money back to the 61st Precinct at 1200 hours on September 18th. There, Li gave the money to Miller, who took possession of the money but neglected to promptly voucher it before going off duty. Miller later returned to the command at 2300 hours in order to voucher the funds (T. 266, 359-64). Ultimately, the Kings County District Attorney's Office charged Person A with misdemeanor Criminal Obstruction of Breathing (P.L. § 121.11), rather than Strangulation in the Second Degree (Resp. Ex. A).

Nine days after the arrest, [REDACTED] after first contacting Brooklyn South Investigations, made an anonymous report to the Internal Affairs Bureau (IAB) that Respondent had downgraded a felony strangulation to a misdemeanor so that a DAT could be issued. He did not advise King or anyone in the command that he had done so.

Specification 2- Improper Directive on Leg Shackles

Respondent is charged with improperly directing officers under her supervision to refrain from securing Person A with leg shackles, as required by the Patrol Guide. Patrol Guide procedure 210-01 provides that "Leg restraints MUST be used . . . for ALL prisoners being transported to a hospital for medical treatment. If a desk officer determines that extenuating circumstances exist that preclude placing leg restraints on a prisoner . . . a Command Log entry will be made detailing the reason why."¹

¹P.G. 210-01, p. 5. Additional Data. It should be noted, though, that Respondent is not charged under the Patrol Guide procedure specifically relating to prisoners, but under P.G. 203-10, P.1., para 5, the "good order" provision. The prisoner procedure, however, is instructive and applicable to these facts.

Respondent readily admitted that she decided that leg shackles were not to be used on Person A. She testified that over time at the precinct, Person A 's physical condition had deteriorated significantly; he told her that his chest was hurting and he was having difficulty breathing, and when asked whether he wanted to go to the hospital, agreed to go. Respondent, who is a trained EMT, explained that in her view, since: (1) he was an elderly and obese individual; (2) he had a history of diabetes and hypertension; and (3) he had spent nearly ten hours in custody, it was not in "the best interest of the Department . . . to shackle this prisoner." She believed there would be a risk of injury if additional pressure was applied to his ankles, given his already labored gait. Moreover, given his physical state, she in no way considered him a flight risk (T. 422-25).

On cross-examination, Respondent confirmed that she directed Moore, Cascone and Gheller that Person A was not to be shackled, consistent with their respective testimonies (T. 454- 55). Respondent claimed that she did not make the required log entry memorializing this discretionary decision because she "sincerely forgot," as it was late in her tour and she was eager to get home because she was feeling ill and [REDACTED] (T. 425, 455-56).

Under these circumstances, it is unnecessary to decide whether Respondent's decision to forego leg shackles on Person A, a 68 year-old man who had health issues, had already been hospitalized earlier and did not appear particularly mobile, was a reasonable use of discretion or whether it was an attempt to give special treatment to a family with whom she was acquainted. The Patrol Guide is clear that leg shackles are standard procedure for hospitalized prisoners. This deviation from procedure is underscored by Gheller's decision to document in his memo book, "As per Lieutenant Magori, no leg shackles on prisoner hospital unless irate" (T. 210, Dept. Ex. 2). Respondent, as the Desk Officer opting to deviate from standard procedure, was obligated to note this decision and its rationale in the command log. A Desk Officer, perhaps

more than anyone else in a command, is expected to be meticulous and disciplined with respect to log entries. Because Respondent failed to follow this simple but important step, I find her Guilty of Specification 2.

Specification 1: Downgrading of Felony Complaint/Improper DAT

Respondent is charged with “improperly direct[ing] that a DAT be issued to [Person A] who was arrested on a felony charge and for [the charge] to be downgraded to a misdemeanor” The two parties to the pivotal interaction, Respondent and Miller, offered inconsistent versions of how the felony came to be reduced to a misdemeanor and a DAT prepared.

At trial, Respondent denied giving any such directive. At first, she asserted that King had authorized her to sign a DAT. Respondent later asserted that Miller had prepared a DAT for her signature on his own volition. Miller conceded that he did change the arrest paperwork, which had originally been prepared with a felony as the top count, but that he only did so because Respondent had directed him to in order for Person A to be issued a DAT. Respondent, Inspector King, Lieutenant ██████████, Sergeant Samuel and Police Officer Miller provided testimony material to this specification at trial, summaries of which are set forth below.

a. Respondent

Respondent testified that on September 17, 2017, she reported for her 1445 x 2347 tour as the 4 to 12 platoon commander. According to Respondent, she saw Samuel shortly thereafter looking a little upset. He advised that he had cross-complaints for assault, with one defendant in the hospital, and that multiple chiefs and community members were calling with questions that were “out of the ordinary,” including whether the offense was “DAT-able.” Respondent asked whether Samuel had spoken with the CO and he confirmed that he had. According to

Respondent, she told him, "Whatever you have is what you have, and I got your back." She believed that Samuel was relieved by her comment (T. 372-75).

Respondent asserted that it was only after taking over the desk at 1500 hours did she learn the identities of the arrestees. On cross examination, she recounted a second conversation she had with Samuel between 1530 and 1600 hours, in which she learned that Person A had been charged with felony strangulation and that the paperwork had already been signed (T. 375-76, 385, 431-33, 451).

Respondent admitted that she had been friendly with Person A's [REDACTED] [REDACTED] when they both resided [REDACTED]. She was adamant that [REDACTED] [REDACTED] (T. 370- 72).

Respondent admitted that [REDACTED] [REDACTED] as [REDACTED] Person A's [REDACTED] While she conceded that she occasionally spoke to [REDACTED] about [REDACTED], she also asserted that she actively avoided [REDACTED] meetings. Although Respondent claimed that she had no personal relationship with anyone in the Person A family, she conceded that while Person A was [REDACTED] in custody, she was exchanging text messages with the [REDACTED] about [REDACTED] s [REDACTED] (T. 414-15). Respondent also admitted that while Person A was hospitalized in custody, she received a phone call, as well as multiple text messages [REDACTED] from Person As [REDACTED], which she claimed to have ignored as "irrelevant."² She denied knowing how [REDACTED] acquired her phone number, but offered that it was readily available within her Staten Island community (T. 419, 427-29, 444-45).

² Respondent did not provide specific times of the text messages. She testified that the content of the text messages were Person A's [REDACTED] first identifying herself, followed by words to the effect of, "May God help us...keep you safe and bless everybody." Respondent insisted she "didn't even entertain" the messages (T. 419-20).

Respondent testified that around 1600 hours, the Commanding Officer, Captain King, called the desk because he was "receiving calls" about Person A's arrest. Respondent advised King that there were two felonies, which he acknowledged but then asked, "Who's the guy in [REDACTED]?" She asserted that she told him, "Don't go near it, Cap, it's not a good family." King asked "How do you know?" Respondent replied, "I know of them and I don't want to put your name on it." He told her to call him back later with an update. Respondent testified that King never mentioned anything about a DAT during this conversation (T. 379-81, 435-36).

Respondent recalled that she encountered Miller for the first time that day while retrieving paperwork. She had a brief interaction with him, asking, "Is he going in for a DAT?" According to Respondent, Miller was holding a piece of paper in his hand as she spoke with him. She claimed that she posed this question because she was "on guard a little bit" with this arrest after Samuel's apparent distress over inquiries from ranking officers. Respondent explained, "Certain precincts . . . they expect and demand things to be done and I have zero tolerance for it . . . I wasn't going to have it" (T. 381, 384-85, 433-35).

Respondent hurried off before Miller had an opportunity to respond to her in order to address a pressing telephone call. She estimated that an hour later, without following up with Miller, she retrieved his two felony complaint reports from the OMNI system and verified them³. Respondent asserted that once she had done so, the complaints could not be changed. She also claimed that it was a busy night and she was feeling ill, so it was a relief to her that the paperwork was complete (T. 381-85, 432-35).

Person A arrived at the precinct at approximately 1930 hours; once Person B was transported to Central Booking shortly after 2000 hours. Respondent was able to place Person A in

³ Respondent did not specify the time at which she verified the felony arrests in the computer.

a cell. As she was the only officer at the precinct who spoke [REDACTED] she dealt with him directly, claiming it was "exhausting" because "he's not a very nice individual." She testified that she tried to "le[ave] it alone as much as possible," though she allowed his [REDACTED] into the cell area so that he could tell his [REDACTED] to calm down. Respondent admitted that she allowed the [REDACTED] to use her personal phone at 2316 hours to call his [REDACTED], as well as to call his own phone, which he claimed was either missing or dead. Respondent stated that she explained to Person A's family members who were present that he had been arrested on a felony charge and that he would be going to jail. She denied that she gave them any special treatment and asserted that no one asked her if she could look into reducing the charges. Respondent testified, "That's not a position I would allow them to put themselves in. I remain extremely professional." She asserted that she had never extended any sort of special courtesy to anyone in her career (T. 385-87, 420-21, 429).

Respondent claimed that at some point after she spoke to Person A's family about his transfer, Miller approached the switchboard area and "presented [her] with a desk appearance ticket." She looked at it, told Miller to give her a minute and called King, advising him that she "ha[d] a DAT for criminal obstruction" of breathing. Respondent purportedly told King, "It's good; [King] said "it's good . . . sign it. And I signed it." When she saw [REDACTED] near the desk area shortly thereafter, she asked him to do her a favor and read the felony complaint report and the "misdemeanor DAT criminal obstruction," explaining that "something was not lining up" and she wanted an "extra set of eyes." [REDACTED] examined the papers and said, "This can't be . . . there's a complaint of pain, so it has to be the felony" (T. 387-90).

According to Respondent, she and [REDACTED] went to ask Miller exactly what had happened with the DAT and he "said it was the only option in the dropdown menu." Respondent said "Okay, we'll just have to do it again. We'll void it." She recalled [REDACTED] saying something

about calling the CO and responding that she had just spoken with him. [REDACTED] walked off and Respondent resumed other desk duties before leaving for the evening. She testified that the misdemeanor arrest was ultimately voided, but did not recall whether she or [REDACTED] had done so (T. 390-92, 453). Respondent contended that she “absolutely, definitely, one hundred percent” did not order Miller to give a DAT to Person A (T. 401).

Respondent testified that during this general time-frame, she and [REDACTED] were preparing for the captain’s exam, exchanging study packets. They both used [REDACTED] for exam prep, a service for which [REDACTED] administered their online message board. She recalled confronting [REDACTED] in August 2017 after seeing several public comments on the site that she considered “disgusting and derogatory,” directed primarily towards Jewish officers who were Sabbath observers and were permitted to sit for exams on alternate dates. According to Respondent, she confronted him and asked how, as a supervisor, he could allow those comments to remain posted. She recalled that he appeared embarrassed, but seemed to “shrug off” her concern. She told him, “You should really do something . . . because it’s disgusting,” and suggested at trial that their relationship became “a little uneasy . . . on his part” after this exchange. Despite this purported chilling of their relationship, Respondent testified that [REDACTED] ‘hopped, skipped and jumped right over’ when she asked him to review Person A’s arrest paperwork (T. 392 400, 453).

Respondent testified that the day after Person A’s arrest, she received a missed call from an unfamiliar number on her personal cell phone; she then sent a text message to that number requesting that the sender identify himself. The caller turned out to be Person A’s [REDACTED] asking about \$300 which he claimed had been on his [REDACTED]’s person. Respondent told him she would look into it and, to be cordial, asked how Person A was doing. Later that night, she directed a subordinate to contact Miller, who was off-duty and at home, about the money. Miller returned

to the 61st Precinct, at around 2200 hours, and vouchered the funds, explaining that he had rushed out of work because of an issue with [REDACTED]. According to Respondent, she told him, "All right, just voucher it and we'll be fine." Respondent advised [REDACTED] of Miller's failure to promptly voucher the money "because prisoner property is supposed to be vouchered immediately" and is treated as "a serious integrity issue"; [REDACTED] responded that he had taken care of it (T. 413-18).

b. Police Officer Dane Miller

Miller testified that when he arrived at the assault job on the day in question, Pers on A and Pers on B were having a verbal dispute, but no longer physically fighting. According to the information they provided, Miller discerned that Pers on A began strangling Pers on B, who in turn struck Pers on A with a tennis racquet. Pers on A, who Miller described as a heavyset [REDACTED] male, was "very upset" and had a laceration on his forehead. Pers on B alleged that Pers on A had "chok[ed] him out"; Miller observed that he had redness all around his neck.⁴ After Miller conferred with his supervisor, Samuel, it was decided that both men would be charged with felonies. Pers on A was transported to [REDACTED] Hospital and Pers on B remained in Miller's custody (T. 18-21, 38-46).

Once he returned to the 61st Precinct, Miller logged the arrest in the Desk Officer's book, escorted Pers on B to a cell and began the arrest paperwork. Pers on A's paperwork reflected a second-degree strangulation charge and was signed by both Miller and Samuel (Dept. Ex. 1).

Miller testified that he began filling out the online booking arrest worksheet at around 1500 hours, and advised Respondent that he was doing so. It was at this point that Respondent

⁴ Miller agreed that at his Department interview, he had said there was a "red line" on Person B's neck. He explained at trial that he checked [REDACTED]'s condition was "normal" on the arrest paperwork because Person B refused medical attention (T. 47, 62-63, 66-67).

"[told him] that there was going to be a DAT for Person A" Miller testified. "I understood what my charges were...strangulation and the assault 2 . . . both felonies, and I know that you couldn't really give the person a DAT." He pointed out the felony strangulation charge to Respondent, who responded, "Don't worry. When he comes back [from the hospital] . . . we're going to figure it all out. We're going to give him a DAT" (T. 28-30, 51-52, 67).

Miller believed Respondent was requesting that Person A be issued a DAT because she had stated to Miller that she knew Person A and had ██████████ He told Respondent, "Okay," and continued with the paperwork while he waited for Person A to return from the hospital. He confirmed that he crossed out the Strangulation in the Second Degree charge on the top charge line of the booking sheet and edited the Penal Law citation to reflect Criminal Obstruction of Breathing because he "was improvising on trying to follow the orders of Lieutenant Magori"⁵ (T. 30-31, 37-38, 50-51).

Miller testified that at approximately 1700 hours, he saw ██████████ and they had a conversation where Miller advised him "that Respondent [was] telling me to approve a DAT for a charge that can't be approved for a DAT." ██████████ and Respondent then had a conversation which did not include him and which he did not hear. Miller next recalled that at some point between 1700 and 1800, after Person A returned from the hospital, he tried to adjust the charge to a misdemeanor in the computer, but was unsuccessful because of a "failsafe" that did not allow changes to a felony complaint.⁶ Miller approached Respondent to advise her of the "failsafe": he stated that as he was explaining the computer issue, ██████████ came in . . . and [told Respondent] that she couldn't do what she was telling me to do." ██████████ also stated that he was going to ██████████

⁵ Miller testified that by the time he had the discussion with Respondent that caused him to alter the document that Samuel had previously signed, Samuel had gone off-duty. He conceded on cross-examination that Respondent did not tell him to prepare a new worksheet for signature (T. 31, 68-69).

⁶ Miller confirmed on cross-examination that he was aware that Respondent had filed online booking sheets in the computer for two felonies (T. 58)

contact Captain King. Miller recalled hearing King through [REDACTED]'s phone, sounding agitated and directing there "would be no DAT, everyone is going to Central Booking." [REDACTED] directed Miller to void the criminal obstruction paperwork and to change the charge back to Strangulation in the Second Degree (T. 31-36, 52, 59, 68-69).

c. Lieutenant [REDACTED]

[REDACTED] testified that he became involved with Person A's arrest while he was conducting a stationhouse inspection around 1730 hours, making sure that proper prisoner procedure was being followed. He recalled seeing Person A, standing un-handcuffed in front of the desk, seemingly about to receive a DAT.⁷ He also remembered someone stating that Person A had been arrested for strangulation and Respondent, at one point, commenting "I know the family; I used to date his son" (T. 141-45, 178-80). [REDACTED] inquired further, explaining that there had been an "issue" in the command with officers and supervisors mistakenly classifying arrests that should have been strangulation as criminal obstruction of breathing. [REDACTED] testified that because he was concerned that a DAT could not be issued for this strangulation charge, he asked Respondent at least three times who had approved the DAT, but received no response (T. 145-48 174-78). On cross-examination, [REDACTED] agreed that he had a fairly good working relationship with Respondent and that she sometimes came to him with questions. He knew her to be a straightforward person and concurred that her evasion of his questions about the DAT was inconsistent with her usual behavior (T. 181-83).

[REDACTED] went to the complaint room, where he asked Miller about the arrest. Miller seemed a little nervous to him but he recited the general details of the arrest and showed [REDACTED]

⁷ On cross-examination, [REDACTED] conceded it was possible he could have been mistaken about the time he observed [REDACTED] in front of the desk when confronted with evidence that Person A had not been brought back from the hospital until around 1930 hours (T.180-81).

the copy of the scratch online booking sheet with Samuel's signature on it. [REDACTED] observed that on the top charge line, strangulation had been crossed out with criminal obstruction of breathing written in right below it. [REDACTED] then went to his office and called Samuel to obtain additional information. He testified that Samuel seemed "very surprised" to hear about a possible DAT being issued and advised that the charge should "definitely" be strangulation. After they ended the conversation, [REDACTED] asked Miller whether anyone had instructed him to issue the DAT and Miller replied that Respondent had (T. 148-56).

[REDACTED] again approached the desk, where Person A was no longer present, and asked Respondent three more times who was approving the DAT. When she again failed to respond, [REDACTED] said that he was going to call the CO. According to [REDACTED], Respondent then told him, "No, don't call the CO." On cross-examination, he denied that Respondent had ever asked for help, or for his opinion, on the charging decision (T. 156-57, 185).

[REDACTED] went to his office and called King, suggesting that he paced around the hallway on this call, but that no one was within earshot. King told [REDACTED] he had already told both Samuel and Respondent to "make sure that the proper charges are there." [REDACTED] advised King that Person A was being issued a DAT despite what Miller and Samuel had relayed about the redness on Person B's neck. According to [REDACTED] King then directed that the DAT be voided and the arrest be processed as strangulation (T. 158-60, 183-85). [REDACTED] returned to the desk and told Respondent that per the CO, the DAT and the arrest paperwork had to be voided and that the arrest was to be processed as strangulation. She did not respond and he went to the complaint room to advise Miller of King's decision (T. 162-64, 184).

On cross-examination, [REDACTED] conceded that although he believed Respondent had committed serious misconduct with respect to the DAT, he did not make any reports about the incident to IAB for nine days. [REDACTED] conceded further that he should have made the

notification sooner. [REDACTED] further admitted that when he made the report, he did so anonymously, rather than [REDACTED]. He explained that he found reporting a fellow lieutenant uncomfortable. When Brooklyn South Investigations contacted him [REDACTED], [REDACTED] he did not recall whether he acknowledged that he was the anonymous complainant. He confirmed, however, that he did not tell anyone in the precinct, including King, that he had made the initial referral to IAB, asserting there was no requirement that he advise anyone of his call (T. 188-94, 198-99).

Finally, [REDACTED] was asked about his role as an administrator of the [REDACTED] website and the public comments regarding promotion lists. He acknowledged he had been an administrator on that site, but said he had not logged in for a long time. He claimed not to have seen the comments complaining about Jewish officers' exam results, but insisted that, if he had, he would have deleted them. [REDACTED] remembered that Respondent raised the issue with him, but did not recall the substance of that conversation (T. 195-97).

d. Deputy Inspector James King

King testified that on September 17, 2017, he received a call at home from his Community Affairs officer, Detective Shaya, who asked if he was aware of anything going on at the precinct. King then contacted Samuel, the on-duty Patrol Supervisor, who advised there had been a cross-complaint assault and that he was "still figuring everything out." King relayed this information to Shaya, who advised that he had received a call from a community member, Person C, regarding the same arrest.⁸ King did not recall receiving any phone calls from community members (T. 276-78, 285-87, 291).

⁸ This is consistent with Detective Shaya's testimony that he received a call from Person C, a community liaison, inquiring about Person A's arrest and later about whether he was eligible for a DAT. After confirming with Samuel that the offense was not "DATable" and advising Person C of same, Shaya called King at home to inform him there was an assault situation with two older [REDACTED] men. He stated that the age of the individuals influenced his decision.

King had subsequent communications with Shaya, Samuel and Respondent that day, but could not be sure of the exact timeline. He testified that he spoke to Respondent when he called the desk around 1556 hours and again when she called him at 1847 hours. Respondent told him that "we had a cross complaint assault and asked me about a DAT for one of the perpetrators . . . She said is it possible to issue a DAT to one of the perpetrators." King told her that he was not working; that she was in charge as Desk Officer; and that it was her decision to make. King testified that in the six months he had worked with Respondent, he found her "very competent." King insisted that he neither initiated discussion of a DAT with Respondent or anyone else, nor did he direct the issuance of a DAT (T. 278-82, 288-90, 294-97).

At some point after King spoke with Respondent, [REDACTED] contacted him with an "update to conclude what we had for the day." King did not recall discussing a DAT during this conversation, though [REDACTED] did mention the cross-complaint felony assault. He recalled a subsequent conversation several days later where [REDACTED] informed him that "Responden [REDACTED] [REDACTED] . . . and that he was initially put in for a DAT . . . [REDACTED] did the follow-up and discovered that it was a felony and it couldn't be a DAT." King testified that he did not see an issue or think misconduct had been committed "because the proper charge at the end was charged and everything seemed to work itself out at the time" (T. 282-84, 291).

King learned of the official investigation weeks later when [REDACTED] brought it to his attention; he subsequently learned that [REDACTED] had made an anonymous report which initiated the investigation. King never asked [REDACTED] why he made the report anonymously, offering that he had "never known [REDACTED] to use judgment that would not benefit me or the command. So I entrusted he made the decision for a reason." He noted there is no Patrol Guide provision that

to call the CO, and also that he wanted King to be aware of the situation, in case neighborhood residents reached out to the borough and King was contacted. Shaya denied that there was any mention of a DAT during his conversation with King (T. 308-12).

requires [REDACTED] to immediately notify the CO regarding reports of misconduct, and testified that in the future, he would clarify with his supervisors his desire to be advised in a more timely manner (T. 292-94, 300-01).

e. *Sergeant Smithu Samuel*

Samuel testified that he responded to the scene of the incident in order to verify the arrests; Samuel, like Miller, noticed "redness" on Person B's neck and the imprints of fingers below his chin and above the neckline. Samuel explained that Person B claimed to have felt pressure and "blood in his throat"; as such, "Person A [was] classified for a strangulation because he put hands around the neck and squeezed, causing substantial pain . . ." (T. 100-08, 127-29).

Later that day, Samuel received "numerous" phone calls from prominent community members inquiring about Person A 's arrest. He told the callers that his charging decision would not be changed and that he would not be coerced or intimidated in any way. He confirmed that this was the first time that he received such a large volume of calls related to one arrest (T. 109-11, 130.) Samuel testified that Shaya, the Community Affairs officer, had also called him to inquire about the details of the arrest, asking "if things could be looked at differently or a different perspective or if . . . a courtesy could be done." Samuel responded that these were "major crimes," and he would not "take a chance" or be coerced⁹ (T.111-12). Samuel also received a call from King, asking for the details of the arrest and directing him to get video from the location and see if there were any witnesses. Samuel returned to the scene but was unsuccessful in gathering additional evidence. He did not recall whether the possibility of a DAT came up at any point during his conversation with King (T.112-16,133-35,138).

⁹ This is generally consistent with Sha ya 's testimony that he asked Samuel whether the offenses were "DAT able" and that Samuel said they were not. However, when asked if he discussed with Samuel "whether a misdemeanor would be issued in lieu of a felony for DAT," Shaya responded, "No, not that I remember" (T. 307, 311).

Samuel testified that when he signed the scratch report, there was only one charge, that of felony strangulation, written on the top charge line. When presented with Department Exhibit 1, he confirmed the document had been altered since he had signed it - the "F" for felony had been changed to an "M"; there was a line striking through "strangulation;" and "criminal obstruction" was handwritten underneath. Strangulation was also written on the second charge line, which was blank when he signed the document (T. 118-20).

Samuel spoke with Respondent as he was leaving the command at about 1630 hours, informing her of the two arrests and that he had signed the scratch worksheets and vouchers. Respondent did not mention at that time that she knew Person A (T. 120-23).

Hours later, he received a call at home from [REDACTED] asking for the details of the arrest and the basis of his determinations. [REDACTED] then put Miller on the phone, who sounded "shaken up" and a "little upset." Samuel testified that a few days later, Respondent asked about his rationale for the charging decision on Person A's arrest. She mentioned "that [REDACTED] [REDACTED]" Samuel felt "uncomfortable" and excused himself, effectively ending the conversation (T. 121-24, 136).

Several witnesses claimed to have heard Respondent indicate that she had some sort of friendship [REDACTED] with a member of the Person A family. Specifically:

- a. Police Officer Paul Gallo (Respondent's witness) guarded Person A at [REDACTED] Hospital. He testified that Person A told him that Respondent [REDACTED] [REDACTED] when they were teenagers. Gallo, who had a good working relationship with Respondent, relayed this to her via a text message. Respondent confirmed she knew Person A, but did not provide any other details or context¹⁰ (T. 319-28).
- b. Police Officer Richard Moore, who transported Person A to Coney Island Hospital late in the evening on September 17, testified that while he was near the desk, he overheard Respondent state that the prisoner was "[REDACTED]" When asked

¹⁰ Gallo also testified that Respondent authorized no special treatment for Person A and specifically directed that his family was not allowed inside his ER hospital room (T. 322-23)

on cross to be specific about what Respondent said, he simply stated that Respondent had indicated "she knew this guy" (T. 342, 346).

- c. Police Officer Domenick Gheller, who relieved Moore at the hospital, testified that while giving him instructions about the assignment, Respondent mentioned that Person A was a "friend" (T. 205-06).
- d. Sergeant Kevin Cascone, who relieved Respondent as desk officer, recalled Respondent stating that she [REDACTED]. He confirmed three times on cross that he heard Respondent use the word [REDACTED] (T. 350 51, 354-56). When asked a fourth time if it was "not possible she used some other word," he stated, "It's possible maybe she used a different word. I recall [REDACTED]" (T. 354). He was subsequently asked whether it was fair to say that he "[did not] remember the conversation well," and he responded, "I remember the conversation...and the only thing that stuck from that time was that she stated to me that she [REDACTED] this person" (T. 356).
- e. SPAA Earlene Holloway testified that she heard Respondent say, [REDACTED] [REDACTED] as a "gentleman walk[ed] out in front of [Ms. Holloway]," as she exited the muster room around 1630 hours (T. 85-88, 92).

Few things are more difficult, yet more fundamental to the role of a trier of fact, than the task of attempting to reconstruct the most probable nature of a past event on the basis of conflicting accounts. When making such determinations, the trier of fact should consider a wide range of factors, including witness demeanor, corroborating evidence, the consistency of a witness' account, the degree to which the witness is interested in the case's outcome, and perhaps most basically the degree to which the witness' account is logical and comports with common sense and general human experience.

I find Miller to be a credible, forthright witness who provided a logical narrative. He conferred with his immediate supervisor, Sergeant Samuel, at the scene and again at the precinct about the felony charge. Prior to entering the arrest in the computer, he briefed Respondent about the arrest, consistent with her role as the Desk Officer, who he claimed told him, "We're going to give him a DAT," without further explanation. Unsurprisingly, Miller pointed out to Respondent that this was a felony charge but was told, "Don't worry, we'll figure it out."

As such, he edited his scratch online booking sheet by: (1) crossing out Strangulation in the Second Degree; (2) changing the “F” for a felony to “M” for misdemeanor; (3) writing in Criminal Obstruction of Breathing; and (4) altering the Penal Law citation accordingly. Miller’s testimony regarding the changes he made to the scratch copy was corroborated by Samuel, who examined Department Exhibit 1 and asserted credibly that none of the alterations which appeared on the exhibit were present on the form when he signed it. Miller testified that he made these alterations only because, “I was improvising on trying to follow the orders of Lieutenant Magori.” He “listened to her” and tried to make similar changes in the computer, but ran into issues as the offense had already been classified as a felony. Eventually, he advised [REDACTED] that “Respondent [was] telling me to approve a DAT for a charge that can’t be approved for a DAT,” a conversation [REDACTED] confirmed in his testimony.

Miller’s account has the ring of truth. It is difficult to imagine that a police officer, after receiving the approval of a supervisor at the scene of the arrest, would unilaterally decide to downgrade a felony to a misdemeanor and issue a DAT if not directed to do so by a higher ranking supervisor. Even if there had been a “dropdown” issue, as Respondent claimed, that would be a reason to advise the Desk Officer of the issue, not make an unauthorized charging decision. It comports with common sense and the ways of the world that if the Desk Officer indicated that the prisoner was to receive a DAT, the arresting officer might initially try to respectfully point out that the existence of a felony charge precluded that action, as Miller claims to have done, but ultimately acquiesce to the order, conforming his paperwork and computer entries accordingly.

Moreover, Miller was clear in his testimony that he made changes to the arrest only in deference to Respondent’s directions about a DAT. The record was devoid of any credible reason for this officer to have made such a decision for the benefit of a defendant who was

essentially a stranger to him, contrasted with Respondent, who, at best, had affiliations which reasonably cast doubt upon her impartiality. Finally, there is no evidence of any bias Miller exhibited toward Respondent, who he considered a "good lieutenant," which could explain a decision to cast undeserved blame upon her.¹¹ I find further that Miller's failure to timely voucher the \$300 in currency which was discovered as Person A was being lodged at Central Booking, while negligent, did not materially undermine his veracity.

Similarly, King testified in a credible and professional manner. He conceded at the outset that he was not certain of the exact timeline regarding when he spoke to the involved officers and only recalled the sum and substance of each conversation, a reasonable concession given that he was off-duty on the day of the arrests, some eighteen months before his testimony at trial.

King testified that: (1) he did not initiate any conversations regarding the issuance of a DAT; (2) Respondent was the first officer to inquire about a DAT; (3) she specifically asked "Is it possible to issue a DAT to one of the perpetrators;" (4) he told Respondent she was "in charge" and that the decision was hers to make; and (5) he made no directive that a DAT should be issued to Person A.

King's unambiguous and credible testimony that he did not direct the issuance of the DAT and that he delegated decision-making on this issue to Respondent completely undercuts

¹¹ the

Respondent's counsel suggested that [REDACTED] held Miller's failure to timely voucher the money over him, so that [REDACTED] could "manipulate things...a favor for a favor" to get Miller to essentially pin the downgrading decision on Respondent. Counsel asserted that [REDACTED] doesn't like Yael Magori because she's [REDACTED] because she received a religious accommodation excusing her from taking exams on Saturday; and because he was jealous of her career trajectory. She characterized [REDACTED] as treacherous and suggested Miller had reason to be afraid of him" (T. 470-72, 482-84). Although Miller was unclear about the exact timing of when he completed the voucher, he confirmed readily that he had to return to work after going off-duty in order to rectify the situation. His lack of diligence, while serious, was remedied relatively quickly (T. 54-55). There is no evidence that [REDACTED] and Miller had a conversation about it, let alone came up with an agreement that Miller would not be disciplined for the voucher if he went along with a scheme to falsely accuse Respondent of corruption, an act that would carry far more serious disciplinary consequences than the voucher offense. As such, the Tribunal affords no weight to the idea that the voucher infraction caused Miller to be disposed to participation in a [REDACTED]-led conspiracy to levy false accusations against Respondent.

Respondent's testimony that she signed the DAT only after King told her to "sign it." Despite Respondent's counsel's argument that "somebody" [else] could have suggested that it was "okay to put down a misdemeanor," King's testimony makes clear that it was only Respondent, acting in his stead as the Desk Officer, who had the authority to downgrade the charge and issue the DAT.

[REDACTED] was forthcoming and credible concerning the material aspects of his testimony, namely: (1) his observations of Person A unshackled at [REDACTED] Hospital; (2) his questioning of Miller regarding the downgrading of the felony charge and the issuance of a DAT; (3) Respondent's obdurate failure to provide any explanation for who authorized the issuance of a DAT; and (4) his denial that Respondent sought his advice regarding the charging decision in Person A's case.

[REDACTED]'s observations at the hospital were corroborated by Gheller, who, when confronted by [REDACTED] conceded that he had not shackled Person A but stated that he had restrained from doing so at the direction of Respondent, as memorialized in his memo book. His testimony regarding the responses Miller gave him when confronted about the paperwork supporting Person A's arrest were also corroborated by Miller in his testimony. While [REDACTED]'s testimony regarding his interactions with Respondent was uncorroborated, it nevertheless made sense, especially in view of her unpersuasive attempts to justify her conduct at trial.

[REDACTED]'s testimony, which was vigorously attacked by Respondent's counsel as motivated by bias, revealed no animus against Respondent or personal interest in the case which would support a finding that his testimony was incredible. Respondent was given wide latitude to confront [REDACTED] on cross-examination and develop evidence of such bias, if it truly existed, but was unable to do so.

While the substance of his testimony may invite questions about the manner in which he performed his duties [REDACTED] those questions are properly addressed to his Commanding Officer and are not credibility issues for this Tribunal to adjudicate.

In stark contrast with the testimonies of Miller and King, Respondent's version of events is illogical, self-serving, internally inconsistent and inconsistent with the other credible evidence in the record.

Respondent testified that she first learned that the arrests were felonies in a conversation she had with Samuel, the on duty Patrol Supervisor, before she assumed her duties as Desk Officer¹² (T. 432-35). When King called and inquired about the incident, she advised him, “[w]e have two felonies” and promised to call him back; according to Respondent, he never mentioned a DAT on this initial call. Respondent testified unambiguously that “The only person who can authorize a DAT for a felony [is] the commanding officer of th[e] specific precinct” (T. 380, 389).

It strains credulity that Respondent would then, as she claims, subsequently “state” to the arresting officer “Is [Person A] going in for a DAT?”¹³ when King, the only person who could authorize a DAT for a felony, had not even brought it up. Respondent’s assertion on direct

¹² Respondent pursued a line of questioning with several Department witnesses on cross-examination regarding the Penal Law definitions of strangulation, a felony, and criminal obstruction of breathing, a misdemeanor. Respondent, however, has not taken the position that she downgraded the charge because she believed there was insufficient evidence to support a felony charge; instead she contends she was in no way involved in any decision to downgrade the arrest. As such, the elements of each offense are irrelevant to whether actionable misconduct occurred here. Similarly, the District Attorney Office’s subsequent decision not to prosecute a felony charge has no probative value, as the charged misconduct relates only to the Sept. 17, 2017 charging decision.

¹³ On redirect, Respondent asserted that her structuring of English sentences is affected by being a native [REDACTED] speaker (T. 459-60). There was no evidence offered, or testimony elicited, of a linguistics or syntax issue at any prior point in the trial. Moreover, the record is devoid of any corroboration of this point, rendering this one-word affirmative response to a leading question in the waning moments of trial self-serving and unworthy of further consideration.

examination that she made the statement because she was "on guard" regarding this arrest because Samuel and King indicated they received calls about it is unworthy of belief. Her subsequent statement on cross-examination that "There was no inquiry. It was . . . acknowledgment that he had the arrest in progress and I was aware." is similarly incredible (T. 434). If, according to Respondent's own testimony, King had not brought up the possibility of a DAT to her, there was absolutely no reason for Respondent, who was, in her own words, "the highest ranking person in the building that day," to spontaneously broach it with Miller, the arresting officer, unless, of course, she was considering issuing a DAT on her own volition.

Even more implausible is her testimony that she did not wait for Miller's response, but then verified the felony arrest in the computer an hour later without following up with him. While it is certainly incongruous that Respondent would enter a felony in the computer only to later direct it downgraded to a misdemeanor, it does not mean it did not occur. Respondent then claimed that after she entered the felony, Miller approached and "presented [her] with a desk appearance ticket." Instead of asking the arresting officer why he was giving her a misdemeanor DAT for a felony, Respondent testified incredulously that she immediately called the CO, advising, "I have a DAT for criminal obstruction [a misdemeanor]" and that he told her to sign it.

Assuming for the sake of argument that Respondent actually had such a conversation with King, any authorization for her to sign the DAT would have been based upon a material omission in her representation to him; that is, failing to mention that the Criminal Obstruction of Breathing charge, which standing alone could certainly be processed with a DAT, resulted from the downgrading of a felony strangulation charge *under her supervision* without any justification offered to King.

Respondent pivoted yet again in her narrative by asserting that almost immediately after signing the DAT, as authorized by King, according to her, she grew concerned over "something

not lining up"; she then sought █████'s advice before they determined that the misdemeanor must be voided and Person A must go to Central Booking on the felony charge. If King had just authorized her to sign the DAT, why then would she almost immediately thereafter suspect that something was awry? Respondent's gratuitous suggestion that the downgraded charge was the result of Miller having a computer issue where "[the misdemeanor was] the only option in the dropdown menu" sounds more like an after the-fact rationalization for her authorization of the downgraded misdemeanor charge.

Respondent's counsel contended, "We don't know what happened here, but it's perfectly possible that there was confusion or that somebody told somebody, 'it's okay. You can put down the misdemeanor.' But there is no credible proof that the person who decided it should be a misdemeanor was Lieutenant Magori" (T. 475). The Tribunal rejects this analysis; I find that the credible, relevant evidence in the record supports a finding that "the person who decided it should be a misdemeanor" was Respondent.

Even if Respondent had conceded, which she did not, that she had made the affirmative assertion to Miller that Person A was to receive a DAT, but did not explicitly direct the downgrading of the felony to a misdemeanor, the evidence would nevertheless support a finding of guilty. Based upon the credible evidence, both Miller and Respondent understood that as a felony, Person A's initial charge would not permit the issuance of a DAT. Stated another way, the only way to issue a DAT would be to remove the felony as a procedural obstacle. If this issue were in doubt in Respondent's mind, Miller's reminder that the charge was a felony should have dispelled any uncertainty. When she responded by telling Miller, "Don't worry. When he comes back [from the hospital] . . . we're going to figure it all out. We're going to give him a DAT," it would have been abundantly clear to any Member of Service that the Desk Officer, who by rank and assignment had the authority to act within the sphere of arrest processing, had made a

decision on the disposition of the arrest and expected Miller to implement her choice without necessarily specifying the means of doing so.

The actual reason for Respondent downgrading the arrest is not an element of the charged offense. Respondent's attempts to distance herself from any suggestion that she was familiar with Person A or his family are, however, evidence of Respondent's consciousness of guilt. Respondent made a point at trial of depicting Person A's family as "annoying" and "not a good family," but that characterization does not obviate her long familiarity with them, having socialized with [REDACTED] when she was a young teenager.¹⁴ She also admitted that while Person A was in police custody, his [REDACTED] attempted to contact her on her personal cell phone via text messages and a phone call; Respondent also admitted that she was communicating via text message with another of Person A's relatives, who was [REDACTED] which communication she claimed was related to [REDACTED]. The next day, she communicated with Person A's [REDACTED] via text message about money that had been in [REDACTED]'s possession at the time of his arrest.

None of these admissions, standing alone, would lead the Tribunal to the conclusion that Respondent, who apparently enjoyed a reputation as a competent and "by-the-book supervisor"¹⁵, would direct the downgrading of a felony arrest and the issuance of a DAT. They are, however, relevant in determining whether she was attempting to minimize her prior

¹⁴ There was extensive testimony regarding comments allegedly made by Respondent indicating that she had [REDACTED]'s [REDACTED] when they were teenagers, something that she emphatically denied as contrary to her culture and upbringing. It is notable that four uniformed officers testified to hearing Respondent say she [REDACTED] s [REDACTED] another officer claimed [REDACTED] told him the same thing while in the hospital and another testified that days after the arrest, Respondent inquired about the charging decision and said something about "maybe" [REDACTED]. Ultimately, whether Respondent [REDACTED] or was merely friends with [REDACTED] s [REDACTED] or something in between, these interactions were by all accounts 25 years ago.

¹⁵ This was confirmed by Miller, Gallo, King and Officer Felix Chabanov, Respondent's one-time driver, who was not working the night of the incident, but nevertheless testified that Respondent had "impeccable integrity" and was extremely knowledgeable with respect to Department procedures (T. 330-32).

association with this family in order to avoid scrutiny of the action she took for Person A's benefit. That the credible evidence in this case supports a finding that she did attempt to reframe her association with the family in a disingenuous way further supports a finding that her denial of the accusations is unworthy of belief.

Finally, Respondent's failure to respond to [REDACTED] s question of who authorized the DAT, asked several times under circumstances in which an inquiry regarding the performance of her official duties should have been viewed as appropriate, if not innocuous, is further evidence of Respondent's awareness then and there that she had committed misconduct. If Respondent had truly been authorized by King to sign the DAT, there was no reason for her to have withheld that information from [REDACTED]

Based upon the foregoing analysis, I find that the Department has met its burden of proof by a preponderance of the credible, relevant evidence that Respondent directed the issuance of the DAT and did so without justification. Because both Respondent and Miller were aware that the felony classification of the arrest charge in Person A's case was a bar to effecting the issuance of the DAT, I further find that the downgrading of the felony to a misdemeanor was the intended and foreseeable result of her direction to issue the DAT. Accordingly, I find her Guilty of Specification I.

c *Specifications 3 & 4- Interfering with an Investigation/False and Misleading Statements*

Specifications 3 and 4 are closely related to Specification 1, in that they deal with allegedly false statements made by Respondent during her November 1, 2017 official interview.¹⁶ Underlying these specifications, in large part, is the credibility of Respondent's account, already analyzed in great detail above. Specifically, Respondent is charged with:

¹⁶The Department made no distinction on their case-in-chief between these two specifications, simply stating in summation that they "essentially go hand in hand" (T. 492). Respondent's counsel also made no attempt to differentiate between these specifications in summation or at any point during trial.

- a. "wrongfully...interfer[ing] with an Official Department investigation... [in having] made false and misleading statements] . . . during an official Department interview.
- b. Making false and misleading statements . . . during an official Department interview.

The Department called the assigned investigator, Lieutenant Richard Tully of Brooklyn South Investigations. Tully confirmed that days after the incident, he took an initial phone call from ██████████ seeking advice on how to proceed regarding an alleged arrest downgrade. He referred ██████████ to IAB; a log was generated; and Tully was assigned the investigation. As part of his investigation, he reviewed the relevant paperwork and interviewed ██████████ Miller, Samuel, Moore and Gheller. Tully and Captain White also interviewed Respondent on November 1, 2017 (T. 225-32). Following the interview, Tully formed the belief that Respondent had made multiple false statements. The alleged falsities are:

- a. Respondent's assertion that she did not direct Miller to issue a DAT and that the downgraded charge was the result of Miller making a computer error.
- b. Respondent's denial that she ██████████
- c. Respondent's assertion that she sought out ██████████ for advice and guidance with respect to the charging decision and the DAT.
- d. Respondent's assertion that Person A was standing near the desk about to be released when ██████████ approached and her contradictory statement later in the interview that Person A was in a cell.

(T. 235-40).

Before analyzing the specific statements, the Tribunal must address Respondent's argument that Tully (along with ██████████) is "entirely unworthy of belief" (T. 469). The argument seems to be based upon the facts that Tully did not document an initial phone call from ██████████ that Tully claimed to have known ██████████ was the anonymous caller to IAB; and that ██████████ spoke with Tully following his testimony. Counsel characterizes this as shocking behavior that taints the investigation (T. 482). The Tribunal does not agree.

Lieutenant Tully is a thirty-eight-year veteran of the Department with twenty-four years' experience in Brooklyn South Investigations. There is absolutely no evidence that he knew

Respondent, let alone that he had any reason to be biased against her. Similarly, while Tully knew [REDACTED] [REDACTED], the record is devoid of any evidence indicating there was a motive for this veteran investigator to aid [REDACTED] in what was, as Respondent's counsel suggests, a coordinated scheme to falsely and corruptly implicate Respondent in misconduct she did not commit. As to the specific contentions made by counsel, the Tribunal finds them lacking in probative value in assessing Tully's veracity.

First, it is reasonable that Tully did not document [REDACTED]'s initial call. He credibly explained that because [REDACTED] was calling for "advice and guidance [on how to proceed on an allegation of misconduct], we [in Brooklyn South Investigations] g[a]ve it to him and t[old] him to make a call to Internal Affairs. We do not make any type of record at that point in time regarding the allegation...IAB [then] doles out...cases as they deem fit" (T. 268 69). There is nothing to suggest Tully was trying to hide the fact that [REDACTED] called; he readily recounted it to this court. Further, there is nothing that suggests that there were any lapses in documentation once he was officially assigned to the investigation.

Second, while [REDACTED] was certain that he did not tell anyone at the precinct that he anonymously called IAB, he admitted that he could not recall whether he told anyone in Investigations. As such, he may have told Tully, particularly given that he spoke to Tully before calling IAB. Thus, counsel's argument that "one of them is lying" lacks an essential foundational premise, *i.e.*, that both factual assertions are mutually exclusive (T. 191-92).

Finally, the fact that [REDACTED] and Tully spoke following [REDACTED]'s testimony did not ripen into a factor weighing against his veracity. When Tully answered counsel's question of whether he spoke to [REDACTED] before taking the witness stand in the affirmative, it was appropriate to permit counsel to further explore the communication on cross-examination to either dispel or substantiate any suspicion of coordinated fabrication or tailoring of testimony between the two

witnesses. When asked for the substance of the conversation, Tully answered that [REDACTED] told him he testified for approximately two hours; that he was cross-examined about his apparent delayed reporting of the events of September 17, 2017 to Internal Affairs; and that he testified that his report to IAB was made anonymously (T. 251-254). Tully further testified that he was already aware that [REDACTED] had made the IAB complaint anonymously before he took the witness stand at trial (T. 253-254).

A review of Tully's testimony in its entirety reveals that he made no effort to explain away [REDACTED]'s delayed reporting or his decision to make the report to IAB anonymously. It is significant to note that he apparently answered the question of whether he spoke with [REDACTED] prior to taking the witness stand candidly, further dispelling any suggestion that he intended to mislead the Tribunal. Moreover, the substance of Tully's testimony dealt with Respondent's responses to questions posed during her official Department interview and the interpretation of telephone records. Accordingly, whatever [REDACTED]'s intent may have been in discussing these aspects of his testimony with Tully, it is apparent from a review of the record that his disclosures did not affect the substance of Tully's testimony before the Tribunal.

Although the better practice would have been for the witnesses to refrain altogether from discussing their respective testimonies until the conclusion of the proceedings, the Tribunal is satisfied that their communication was not material to the factual findings involved in the adjudication of Specifications 3 and 4. I further find Tully to have been a credible and forthright witness.

Turning to the substance of Respondent's statements, the most material statement at issue is Respondent's repeated declaration that she had no recollection of instructing Miller to issue a DAT and positing more than once that the misdemeanor charge resulted from Miller having an issue with a computer dropdown menu (Dept. Ex. 4 at pp. 13-15, 27-28). Respondent, as a

supervisor who was being interviewed about possible misconduct, had a strong incentive to be less than candid on this point. She was contradicted, both in interviews and at trial, by Miller, an officer who Respondent herself described to the investigators as "very efficient" and reliable with paperwork. Tully found Miller's account credible and that was part of his reasoning in opining Respondent made a false statement.¹⁷ As outlined extensively in the analysis of Specification 1, I found Respondent's account of her interactions with Miller prior to her signing the DAT and her statements regarding his purported issues with the computer dropdown menu to be unpersuasive, self-serving and illogical in contrast to Miller's plausible and professional recounting of how he processed Person A's arrest as a felony until directed otherwise by Respondent. Respondent's interview narrative is similarly problematic and lacks the ring of truth. I find that her statements were knowingly misleading at the time she made them; I further find them to be material false statements because they went beyond a mere denial of misconduct and instead offered an alternative factual scenario which, if believed, would absolve her of responsibility. As such, I find that she made false and misleading statements on this material factual assertion.

The other material false statement Respondent is alleged to have made is that she sought

[REDACTED] out for advice and guidance on the charging decision after signing the DAT.

Respondent told investigators that shortly after signing the DAT, she saw [REDACTED] "[her] go-to

¹⁷ Tully also believed that Respondent had contradicted herself during the course of the interview - that when asked whether she instructed Miller to give Person A a DAT, she initially stated "I said he's going in for a DAT" (Dept. Ex. 4, p.9, Ins. 16-18). Later in the interview, she stated, "I never, I never. I don't recall saying give him a DAT" (Dept. Ex. 4, p.23, In.10-11). Respondent disputed the transcription on p.9, saying that what she actually stated to the interviewers was, "I said [to Miller] is he going in for a DAT." This would render Respondent's interview statement consistent with her trial testimony. Respondent suggested she had confirmed this inaccuracy by taking the relevant portion of the interview recording and slowing it down on her personal phone. The Tribunal declined to allow Respondent's edited recording in evidence (T. 404-12). Ultimately, an examination of Respondent's syntax on this particular comment is unnecessary to resolve the relevant question. Based on the full record, and without making a finding that Respondent contradicted herself within the interview, the Tribunal is satisfied, as outlined above, that the Department has established that Respondent made false or misleading statements during the interview regarding the question of whether she instructed Miller to issue a DAT.

guy," by the desk and asked him to take a look at Person A's arrest paperwork, because the narrative "didn't sit well" with her for a misdemeanor. She asserted that he reviewed the paperwork and "thankfully" realized the charge needed to be elevated to a felony. According to Respondent, she and [REDACTED] spoke to Miller together and confirmed that Person A would be charged with a felony and the misdemeanor would be voided (*Id.* at 12, 16-20, 27-28, 40).

Conversely, Tully testified that, "[REDACTED] told us that he approached the arresting officer [to see] what was going on because he knew that the arrest was a felony and was wondering why [the defendant was about to be] issued a DAT" (T. 241-42). This is consistent with [REDACTED]'s trial testimony that he was concerned about the issuance of a DAT and could not get an answer from Respondent about who authorized it. As such, he sought out Miller, who eventually confirmed that Respondent had ordered him to give Person A a DAT.

Respondent's counsel argued that this is simply Respondent's word against [REDACTED]'s word and thus should not be considered a "lie." Counsel emphasized that [REDACTED] "wasn't even honest enough until he was cross-examined to admit he was the anonymous caller" and further alleged that [REDACTED] did not like Respondent because of professional jealousy and her religious accommodation for promotion exams. This unsubstantiated argument fails to persuade on any front.

There is nothing in the record that actually corroborates this theory, let alone establishes that [REDACTED] in whom King expressed great confidence, would risk his own career trajectory by making false allegations against another lieutenant. [REDACTED]'s prior association with a message board where officers griped about, among other things related to exams, the fact that Jewish officers were permitted to take exams on Sundays, is not particularly probative or illuminating, especially where no such comment was traced to [REDACTED] himself.

The fact that [REDACTED] made an anonymous report regarding this incident, rather than reporting [REDACTED] is peculiar and perhaps raises questions about his level of comfort or effectiveness [REDACTED]. The anonymous complaint, does not, however, appear to this Tribunal to be indicia of nefarious intent.

Most significantly, it is not simply Respondent's word against [REDACTED]. Miller testified credibly that he told [REDACTED] that Respondent instructed him to give Person A a DAT. Miller's testimony was corroborated by [REDACTED]'s credible testimony that having learned of Respondent's direction to Miller, he then addressed it with her. In contrast, Respondent's account lacks any corroboration in the record. Moreover, [REDACTED]'s account - [REDACTED] she began asking questions after hearing someone arrested on a felony was about to be released on a DAT - is quite plausible. Respondent, on the other hand, asked investigators to believe that as Desk Officer, she signed off on a DAT that was presented to her by a police officer on an arrest that she initially was advised was a felony and grew concerned only afterward, causing her to seek out [REDACTED]. The investigators found her account to be dubious, repeatedly asking her to explain it again, a characterization with which the Tribunal agrees.

Based on the credible evidence in the record, I find that Respondent's statements about seeking [REDACTED]'s advice and guidance on this arrest were falsities calculated, if believed, to reframe her conduct as the virtuous discovery and correction of a mistake in the completion of arrest forms by another Member of Service, accomplished in consultation with, and relying upon the advice of [REDACTED] rather than a clumsily-executed plan to extend a measure of leniency to a defendant with whom she was acquainted. Under the circumstances presented in this case, the false scenario described above would absolve her of culpability, thereby establishing the assertion's materiality.

The other two alleged false statements --where Person A was located when [REDACTED] approached and Respondent's denial that she [REDACTED] Person A's [REDACTED] --are far less consequential to the central issue of circumstances leading up to the issuance of the DAT. With respect to the former alleged false statement, Respondent's counsel argued that while she was likely confused by the questioning and gave conflicting answers, she did not deliberately lie (T. 479). I find that the credible evidence in the record could just as easily support an innocent interpretation of her statements on this point as well as an interpretation that she committed misconduct.

When Respondent was first asked where Person A was when she "found out about the DAT," she responded, "The DAT was printed. I put it on the desk" and answered in the affirmative when asked if Person A was at the desk and un-cuffed. The questioner, Captain White, then stated he was confused and clarified the question; Respondent answered that when the DAT was "approved." Person A was in the cell (Dept. Ex. 4 at 25-26, 30). This line of questioning was imprecise, with both Respondent and the investigator seeking clarification. Accordingly, the Tribunal accepts Respondent's assertion that she was not trying to mislead on this relatively minor point, but was simply not following the line of questioning.

Finally, as to the issue of whether Respondent [REDACTED] I do not find that Respondent tried to mislead investigators during the interview. Consistent with her trial testimony, she did not deny having some sort of friendship with [REDACTED] as a young teenager, but was adamant that [REDACTED]. Later, in the interview, she suggested that [REDACTED] (*Id.* at 6-8, 44-45). As outlined in the analysis of the evidence pertaining to Specification I, the particular semantics of how Respondent characterized her interactions with [REDACTED] are of no real significance. To be certain, it is curious that so many witnesses seem to recall her

mentioning [REDACTED]; nevertheless, the Tribunal need not and will not make a finding

on whether Respondent [REDACTED] something she indicated would have been

contrary to her culture and upbringing. I find that Respondent was candid with investigators

about socializing with [REDACTED] twenty-five or more years ago, even offering that they [REDACTED]

[REDACTED] I find it likely that in responding to the question, Respondent framed her

answer in a manner which was consistent with her cultural norms but which may at the same

time have been perceived as equivocating.

Based upon a preponderance of the credible relevant evidence, I find that Respondent made false and/or misleading statements during her official Department interview on the material questions of whether she directed the issuance of the DAT and whether she sought out [REDACTED] for advice and guidance on the charge. While the latter two allegedly false statements spoke to tangential details, the former go to the misconduct at the heart of this case. With these statements, Respondent sought to avoid responsibility for the downgrading decision and even attempted to reframe her actions as a proactive effort to correct a mistake. Accordingly, I find her Guilty of Specification 4.

Relying upon the same reasoning by which I find Respondent's two false statements to have been material, I further find that she offered them in an attempt to interfere with an investigation.

The circumstances under which her statements were made support a finding that she offered them in an attempt to not only cast doubt upon the veracity of Miller and [REDACTED]

(whose statements, if believed, would point to her culpability) but also to redirect the focus of the investigation to them, suggesting that they falsely accused her as part of a corrupt scheme.

Based upon the foregoing, I find her Guilty of Specification 3.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. (*see Matter of Pell v. Board of Educ.*, 34 N.Y.2d 222, 240 [1974]). Respondent was appointed to the Department on July 10, 2006. Information from her personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

Respondent has been found guilty of all charges and the Department has recommended a penalty of 45 vacation days and one-year dismissal probation. To support that recommendation, the Department cited two negotiated settlements involving veteran officers who made false statements during investigative interviews and were subsequently placed on dismissal probation. (*see Disciplinary Case No. 2015-14681* [May 3, 2018][Ten-year officer with prior discipline negotiated penalty of 30 vacation days and one-year dismissal probation for (i) making false and misleading statements during a CCRB interview and (ii) impeding an official Department investigation by making false and misleading statements during a subsequent official Department interview. The statements involved a consistently false narrative that Respondent had not conducted an improper frisk and search); *Disciplinary Case No. 2015-13253* [March 27, 2017][Twelve-year sergeant with no disciplinary record negotiated penalty of 30 vacation days and one-year dismissal probation for (i) failing to fully cooperate with an official Department investigation by making inaccurate and misleading statements during an official interview and (ii) failing to timely notify IAB after witnessing a subordinate using excessive and unnecessary force].

The Tribunal was unable to identify a case involving similar circumstances of an arrest downgrade compounded by material falsities made at an official interview once an investigation had commenced. Typically, in cases where a supervisor downgrades or directs the downgrading of a charge, a penalty of 10 vacation days has been imposed for a first offense (*see Disciplinary*

Case No. 2015-14241 [August 8, 2016][Eleven-year lieutenant with no disciplinary history forfeited ten (10) vacation days for (i) wrongfully directing a subordinate to change a grand larceny classification to lost property and (ii) ordering the subordinate officer to prepare a false/inaccurate narrative in the complaint report. The subordinate officer credibly testified that he initially refused to downgrade the complaint report, but ultimately complied after respondent, the platoon commander, wrote out a new Complaint Report for him to copy]; *see also Disciplinary Case No. 2016-16649* [August 24, 2017][Twelve year sergeant with no disciplinary history negotiated a penalty of ten (10) vacation days for, while acting as patrol supervisor, (i) causing inaccurate information to be entered into the narrative portion of a complaint report, and (ii) failing to record sufficient facts to allow proper classification of an offense. An investigation revealed that after responding to an assault call with subordinate officers, Respondent specifically directed that complaint reports be prepared and classified as misdemeanors, despite the fact there was sufficient evidence to classify the reports as felonies]).

Without analogous precedent as a clear guidepost, the Tribunal is left to consider all the relevant facts and circumstances in coming to a fair penalty recommendation which adequately addresses the seriousness of the misconduct. Preliminarily, it must be noted that Respondent has an unblemished record in her near thirteen-year tenure with the Department. Several witnesses, including those called by the Department, spoke to her competence and conscientiousness as a supervisor. Respondent's consistently above average performance evaluations and a sterling letter of support from the CO of the 70th Precinct, where she was transferred following the filing of these charges, detail her "steady focus" and strong leadership skills. Respondent's reputation is not on trial, however: she is being held accountable for her actions on September 17, 2017, and for her statements on November 1, 2017.

On September 17, 2017, the authority of the Commanding Officer of the 61st Precinct had been delegated to Respondent in her role as Desk Officer. In that capacity, she was afforded great discretion in the execution of her duties. What she did not have the authority to do was approve the arrest paperwork for a felony charge, then attempt to circumvent her own decision by directing Miller to draft a Desk Appearance Ticket, leaving it to him to perform a slight off-hand adjustment to the arrest paperwork to make the issuance of a Desk Appearance Ticket appear legitimate.

Similarly, Respondent's decision to afford Person A a measure of leniency by directing police officers not to shackle him is not misconduct in and of itself; her failure to document her decision to exercise her discretion is. It does not matter whether, judging after the fact, her decision could have been deemed a reasonable exercise of discretion. Members of this Department, especially leaders, are rightfully expected to perform their duties in a manner which survives later scrutiny.

The most serious misconduct, however, was Respondent's complete failure at her Department interview to accept responsibility for her decision to issue Person A a DAT, providing what the Tribunal found to be a self-serving and misleading narrative designed to implicate other officers and absolve her of any culpability. In taking that course of action, Respondent betrayed the trust of the police officers subject to her authority, as well as the trust of the precinct commander who delegated his authority to her. She complicated what should have been a straightforward inquiry into a single charging decision by providing misdirection to the officers charged with conducting the investigation. Taking all of the relevant circumstances into account, a significant forfeiture and a period of monitoring are warranted.

Accordingly, the Tribunal recommends that Respondent be **DISMISSED** from the New York City Police Department, but that her dismissal be held in abeyance for a period of one year.

pursuant to Administrative Code § 14-115 (d), during which time she is to remain on the force at the Police Commissioner's discretion and may be terminated at any time without further proceedings. The Court further recommends that Respondent forfeit 30 vacation days and be suspended for a period of 15 days.

Respectfully submitted,


Paul M. Gamble
Assistant Deputy Commissioner Trials

APPROVED


NOV 97
JAMES P. S.
POLICE COMM



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
LIEUTENANT YAEL MAGORI
TAX REGISTRY NO. 942099
DISCIPLINARY CASE NO. 2017-18331

Respondent was appointed to the Department on July 10, 2006. On her last three annual performance evaluations, she received 4.0 overall ratings of "Highly Competent" for 2016, 2017 and 2018. She has five medals for Excellent Police Duty and one medal for Meritorious Police Duty.

Respondent has no disciplinary history. In connection with the instant Charges and Specifications, she was placed on Level 1 Discipline Monitoring on January 31, 2018. Monitoring remains ongoing.

For your consideration.

Paul M. Gamble
Assistant Deputy Commissioner Trials